



**U.S. Citizenship
and Immigration
Services**

**Non-Precedent Decision of the
Administrative Appeals Office**

In Re: 31261488

Date: MAY 28, 2024

Appeal of Texas Service Center Decision

Form I-140, Immigrant Petition for Alien Workers (Extraordinary Ability)

The Petitioner, an assistant professor, seeks classification as an individual of extraordinary ability. *See* Immigration and Nationality Act (the Act) section 203(b)(1)(A), 8 U.S.C. § 1153(b)(1)(A). This first preference classification makes immigrant visas available to those who can demonstrate their extraordinary ability through sustained national or international acclaim and whose achievements have been recognized in their field through extensive documentation.

The Director of the Nebraska Service Center denied the petition, concluding the Petitioner did not satisfy at least three of the initial evidentiary criteria. The matter is now before us on appeal. 8 C.F.R. § 103.3.

The Petitioner bears the burden of proof to demonstrate eligibility by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 375-76 (AAO 2010). We review the questions in this matter de novo. *Matter of Christo's, Inc.*, 26 I&N Dec. 537, 537 n.2 (AAO 2015). Upon de novo review, we will dismiss the appeal.

I. LAW

Section 203(b)(1)(A) of the Act makes visas available to immigrants with extraordinary ability if:

- (i) the alien has extraordinary ability in the sciences, arts, education, business, or athletics which has been demonstrated by sustained national or international acclaim and whose achievements have been recognized in the field through extensive documentation,
- (ii) the alien seeks to enter the United States to continue work in the area of extraordinary ability, and
- (iii) the alien's entry into the United States will substantially benefit prospectively the United States.

The term "extraordinary ability" refers only to those individuals in "that small percentage who have risen to the very top of the field of endeavor." 8 C.F.R. § 204.5(h)(2). The implementing regulation

at 8 C.F.R. § 204.5(h)(3) sets forth a multi-part analysis. First, a petitioner can demonstrate sustained acclaim and the recognition of achievements in the field through a one-time achievement (that is, a major, internationally recognized award) or qualifying documentation that meets at least three of the ten categories listed at 8 C.F.R. § 204.5(h)(3)(i) – (x) (including items such as awards, published material in certain media, and scholarly articles).

Where a petitioner meets these initial evidence requirements, we then consider the totality of the material provided in a final merits determination and assess whether the record shows sustained national or international acclaim and demonstrates that the individual is among the small percentage at the very top of the field of endeavor. *See Kazarian v. USCIS*, 596 F.3d 1115 (9th Cir. 2010) (discussing a two-part review where the documentation is first counted and then, if fulfilling the required number of criteria, considered in the context of a final merits determination); *see also Visinscaia v. Beers*, 4 F. Supp. 3d 126, 131-32 (D.D.C. 2013); *Rijal v. USCIS*, 772 F. Supp. 2d 1339 (W.D. Wash. 2011).

II. ANALYSIS

Because the Petitioner has not indicated or established she has received a major, internationally recognized award, she must satisfy at least three of the alternate regulatory criteria at 8 C.F.R. § 204.5(h)(3)(i)-(x). The Director concluded the Petitioner fulfilled only two (judging under 8 C.F.R. § 204.5(h)(3)(iv) and scholarly articles under 8 C.F.R. § 204.5(h)(3)(vi)) of the six claimed categories of evidence. On appeal, the Petitioner maintains her qualification for one additional criterion. Issues and prior eligibility claims not raised on appeal are waived. *See, e.g., Matter of O-R-E-*, 28 I&N Dec. 330, 336 n.5 (BIA 2021) (citing *Matter of R-A-M-*, 25 I&N Dec. 657, 658 n.2 (BIA 2012)). For the reasons discussed below, the Petitioner did not demonstrate she meets at least three categories of evidence.

A. Evidentiary Criteria

Documentation of the alien's receipt of lesser nationally or internationally recognized prizes or awards for excellence in the field of endeavor. 8 C.F.R. § 204.5(h)(3)(i).

USCIS determines if the person was the recipient of prizes or awards.¹ The description of this type of evidence in the regulation indicates that the focus should be on the person's receipt of the awards or prizes, as opposed to the employer's receipt of the awards or prizes.²

USCIS then determines whether the award is a lesser nationally or internationally recognized prize or award, which the person received for excellence in the field of endeavor.³ As indicated by the plain language of the regulation, this criterion does not require an award or prize to have the same level of recognition and prestige associated with the Nobel Prize or another award that would qualify as a one-time achievement.⁴

¹ *See generally* 6 USCIS Policy Manual F.2(B)(1), <https://www.uscis.gov/policymanual>.

² *Id.*

³ *See generally* 6 USCIS Policy Manual, *supra*, at F.2(B)(1).

⁴ *Id.*

The Petitioner contends her eligibility for this criterion based on her receipt of the “2020 [redacted] Best Article Award” from the [redacted]⁵ and [redacted]. The record contains background information about [redacted]. However, none of the material mentions the [redacted] Best Award, let alone establishes the award’s national or international recognition for excellence in the field.

In addition, the Petitioner provided a letter from D-P-, co-editor for [redacted] who stated:

The [redacted] Award is given to one outstanding manuscript each year. A committee chooses the best article from those published in the previous year, based on three criteria: contribution to knowledge in social science, quality and execution of research design, and accessibility to peers in other social sciences. The author(s) receive a \$1,000 cash award and are honored at the President’s Reception and Awards Ceremony. [The Petitioner’s] paper was one of over 50 papers published in 2019, and her selection for the award speaks volumes to the quality of work and significance of its contribution not just to sociology but to the social sciences more broadly.

The Petitioner also submitted an email from A-A-, president of [redacted] who also repeated the selection criteria for the award. The evidence, however, does not discuss the award’s national or international recognition for excellence in the field. Here, the Petitioner did not demonstrate the field’s acknowledgement of the award for excellence beyond [redacted]. Without additional documentation or information, the Petitioner has not shown that the field views the [redacted] Best Article Award as a national or international award for excellence.⁶

For the reasons discussed above, the Petitioner did not show she satisfies this criterion.

B. O-1 Nonimmigrant Status

We note that the record reflects that the Petitioner received O-1 status, a classification reserved for nonimmigrants of extraordinary ability. Although USCIS has approved O-1 nonimmigrant visa petitions filed on behalf of the Petitioner, the prior approval does not preclude USCIS from denying an immigrant visa petition which is adjudicated based on a different standard – statute, regulations, and case law. Many Form I-140 immigrant petitions are denied after USCIS approves prior nonimmigrant petitions. *See, e.g., Q Data Consulting, Inc. v. INS*, 293 F. Supp. 2d 25 (D.D.C. 2003); *IKEA US v. US Dept. of Justice*, 48 F. Supp. 2d 22 (D.D.C. 1999); *Fedin Bros. Co., Ltd. v. Sava*, 724 F. Supp. 1103, 1108 (E.D.N.Y. 1989), *aff’d*, 905 F.2d 41 (2d. Cir. 1990). Furthermore, our authority over the USCIS service centers, the office adjudicating the nonimmigrant visa petition, is comparable to the relationship between a court of appeals and a district court. Even if a service center director has approved a nonimmigrant petition on behalf of an individual, we are not bound to follow that finding in the adjudication of another immigration petition. *See La. Philharmonic Orchestra v. INS*, No. 98-2855, 2000 WL 282785, at *2 (E.D. La. 2000).⁷

⁵ [redacted] changed its name to the [redacted] in 2022. *See* [redacted] screenshots contained in the record and submitted by the Petitioner.

⁶ The record also contains a list of winners from 2014 – 2020; however, the Petitioner did not demonstrate how the evidence establishes the national or international recognition for excellence of the award.

⁷ *See also generally* 6 USCIS Policy Manual, *supra*, at F.2(B)(3).

III. CONCLUSION

The Petitioner did not establish she satisfies three categories of evidence. As such, we need not provide the type of final merits determination referenced in *Kazarian*, 596 F.3d at 1119-20, and we reserve this issue.⁸

Nevertheless, we have reviewed the record in the aggregate, concluding it does not support a conclusion that the Petitioner has established the acclaim and recognition required for the classification sought. The Petitioner seeks a highly restrictive visa classification, intended for individuals already at the top of their respective fields, rather than those progressing toward the top. *Matter of Price*, 20 I&N Dec. 953, 954 (Assoc. Comm'r 1994) (concluding that even major league level athletes do not automatically meet the statutory standards for classification as an individual of “extraordinary ability,”); *Visinscaia*, 4 F. Supp. 3d at 131 (internal quotation marks omitted) (finding that the extraordinary ability designation is “extremely restrictive by design,”); *Hamal v. Dep’t of Homeland Sec. (Hamal II)*, No. 19-cv-2534, 2021 WL 2338316, at *5 (D.D.C. June 8, 2021), *aff’d*, 2023 WL 1156801 (D.C. Cir. Jan. 31, 2023) (determining that EB-1 visas are “reserved for a very small percentage of prospective immigrants”). *See also Hamal v. Dep’t of Homeland Sec. (Hamal I)*, No. 19-cv-2534, 2020 WL 2934954, at *1 (D.D.C. June 3, 2020) (citing *Kazarian*, 596 at 1122 (upholding denial of petition of a published theoretical physicist specializing in non-Einsteinian theories of gravitation) (stating that “[c]ourts have found that even highly accomplished individuals fail to win this designation”)); *Lee v. Ziglar*, 237 F. Supp. 2d 914, 918 (N.D. Ill. 2002) (finding that “arguably one of the most famous baseball players in Korean history” did not qualify for visa as a baseball coach). Here, the Petitioner has not shown the significance of her work is indicative of the required sustained national or international acclaim or it is consistent with a “career of acclaimed work in the field” as contemplated by Congress. H.R. Rep. No. 101-723, 59 (Sept. 19, 1990); *see also* section 203(b)(1)(A) of the Act. Moreover, the record does not otherwise demonstrate the Petitioner has garnered national or international acclaim in the field, and she is one of the small percentage who has risen to the very top of the field of endeavor. *See* section 203(b)(1)(A) of the Act and 8 C.F.R. § 204.5(h)(2). The record does not contain sufficient evidence establishing the Petitioner among the upper echelon in her field.

For the reasons discussed above, the Petitioner has not demonstrated her eligibility as an individual of extraordinary ability. The appeal will be dismissed for the above stated reasons, with each considered as an independent and alternate basis for the decision.

ORDER: The appeal is dismissed.

⁸ *See INS v. Bagamasbad*, 429 U.S. 24, 25-26 (1976) (stating that, like courts, federal agencies are not generally required to make findings and decisions unnecessary to the results they reach); *see also Matter of L-A-C-*, 26 I&N Dec. 516, n.7 (declining to reach alternative issues on appeal where an applicant is otherwise ineligible).